

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

November 3, 2004

ORDER

Appeal of Consumer Assistance Division
Decision #2004-17563 Regarding Biddeford
Saco Water Company

Docket No. 2004-566

BIDDEFORD & SACO WATER COMPANY
Proposed Tariff Revision to System Development
Charges

Docket No. 2004-576

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we uphold the decision of our Consumer Assistance Division (CAD) but we grant an exemption from Chapter 65 of the Commission's Rules and authorize the Biddeford and Saco Water Company (BSWC) to charge new customers for a reinforcing main resulting from anticipated growth in the Buxton Road area in Saco, Maine.

II. BACKGROUND

The facts of this case are accurately described in CAD's decision of August 11, 2004 so we do not repeat them here. In brief summary, this case arose when a developer, Mr. David Dunn, questioned BSWC's requirement that he pay \$2,500 for each of eight lots he was developing in the Buxton Road/North Saco area, west of the Maine Turnpike (Area). This so called Reinforcement Charge was in addition to the cost of the water main extension into the development, which Mr. Dunn does not dispute. According to BSWC, the charge was in accordance with Chapter 65 § 2(A) and (G) of the Commission's rules and was imposed on all new customers in the area to pay for a reinforcing main necessitated by anticipated growth in the area. The Area has been designated as a residential growth area in the City of Saco's Comprehensive Plan. BSWC determined that a reinforcing main would be needed along the existing main to maintain adequate pressure upon the addition of 185 new customers. Based on its engineer's recommendation, BSWC determined that each customer would be responsible for 25 feet of main or \$2,500¹ to accommodate the growth in this discrete area.

¹ BSWC now estimates the cost to be \$2100 per lot. Like other main extension charges, any charge will be subject to negative or positive adjustment depending on actual costs.

Chapter 65 of the Commission's Rules sets forth the standards and conditions for the extension of water utility service. This includes when and how much a utility may charge a new customer for an extension to the new customer and for any upgrades to other parts of the system caused by the new use.

Chapter 65, Section 2(A) states, in part:

If a replacement² is required because of an increase in demand by a new or existing customer...the customers presenting the increased demand shall pay for a reasonable portion of the replacement pursuant to section 3... .

Section 2(G) states, in part:

If the demand for water expected from the customers to be served by the extension requires existing mains leading to the extension to be replaced or supplemented by parallel mains...to satisfy demands or to maintain adequate pressure...a reasonable portion of these costs shall be included in the cost of the water main extension.

CAD found that the charges were not consistent with Chapter 65 because the reinforcing mains were not needed currently, but instead were for projected future needs. According to CAD, the new customers being charged were not overburdening the current system and they were being required to invest in a main to fix a problem that may never exist. The CAD went on to opine that even if the charge were permitted under Chapter 65, BSWC had calculated the amount incorrectly. It found that BSWC could not use so-called alternative method (defined in Chapter 65 § 1(C)) to calculate a customer's contribution because 2(A) makes no reference to 1(C). The alternative method allows the cost of the extension, less the utility's contribution, to be divided equally among new customers in an area where lots are approximately the same size. Even if 1(C) is applicable, CAD states the lots here are not necessarily of equal size.

CAD concluded that BSWC could not use Chapter 65 to impose the charge on Mr. Dunn and that it should refund the charge to all 43 lot owners who have paid the charge to date. It stated that BSWC could request a waiver or file a request for a system development change, similar to the charge permitted for consumer-owned utilities in 35-A M.R.S.A. § 6107. This section allows a consumer-owned utility to

² Even though Section 2(A) only refers to replacement of mains, in 1990 the Director of Technical Analysis determined it was logical that Section 2(A) also apply to parallel reinforcing mains and that their omission from this section may have been an oversight (especially given their inclusion in Section 2(G)). Therefore, the Director granted a waiver to allow the installation of reinforcing mains under 2(A). *Biddeford and Saco Water Company Request for Waiver of Chapter 65, Section 2(A)*, Docket No. 90-092 (Oct. 17, 1990).

impose a fee on all new customers (or customers expanding their usage after a specific date), with the funds to be used to finance capital outlays for water system expansions caused by an increase in demand for services.

On August 17, 2004, BSWC appealed CAD's decision. BSWC also filed, to the extent needed, a Petition for Exemption from Chapter 65 or, in the alternative, a Request for Authorization of a System Development Charge.

BSWC first argues that CAD's conclusion that Chapter 65 does not apply, unduly restricts the application of Chapter 65. BSWC states that the controlling principle of Chapter 65 is that costs of system expansions should be borne by the customers who are responsible for them. It claims nothing in the rule requires that the increase in demand causing the upgrade be immediate. According to BSWC, limiting the application of the charge to current needs is inconsistent with prudent utility planning. BSWC's engineers determined that adding 185 customers will require it to install a reinforcing main in order to maintain adequate system pressure. Charging the new customers as they come on line is proper because they represent the first increment of growth causing the need for the upgrade. Finally, it claims that section 2(G) allows recovery of a reasonable part of the costs and does not otherwise limit the use of the alternative method described in section 1(C). BSWC argues that where all the development in the area will be exclusively residential, there is good reason to believe the lots will all be approximately the same size and come within the scope of section 1(C).

In the alternative,³ BSWC asks for an exemption from Chapter 65,⁴ if the Commission finds that the Rule's provisions are inapplicable to this situation. In support of the exemption request it argues that strict application of these sections produces an undesirable and unfair result. If 2(G) prevents imposition of a charge for the reinforcing mains until the existing main is overburdened, then the 186th customer will be required to pay for the entire cost. This does not further the rule's objective to allocate costs to those causing them.

BSWC further argues that a strict application of Chapter 65 could also impede its ability to respond to the City's growth plans. BSWC claims it would have reconsidered its expansion plan if it had known it could not collect the funds over time from new customers in the growth area. Finally, it claims that strict application produces inequities amongst the customers in the area. The first 185 customers will receive a free ride even though their demand creates a need for the upgrade, with subsequent customers bearing the entire amount. It claims its plan is consistent with the spirit of

³ BSWC also makes arguments in support of a system development change. Because we grant a waiver of Chapter 65, we do not discuss those arguments.

⁴ Chapter 65 § 6(E) allows a utility or any person to apply to the Commission for exemption from any provision of the rule for good cause.

Chapter 65 and warrants an exemption from Section 2(G) and (C) if the Commission agrees with CAD that these provisions are not applicable to this situation.

III. DISCUSSION

We agree with CAD that Chapter 65 does not specifically address the situation of future development necessitating an upgrade and how funds for that upgrade will be collected over time. Chapter 65 has typically applied in situations where either a new customer or increased demand from an existing customer will immediately (or in the very near future) impact the system. Nonetheless, it is clearly the intent of the rule to require customers causing the need for a water main extension or an upgrade to a water main, to pay for the extension or upgrade.

We find that BSWC's Reinforcement Charge accomplishes the same ends as those provided for in Chapter 65 § 2(A) and (G). The only difference is the timing and degree of certainty of the timing. Section 2(A) allows a utility to charge customers presenting an increase in demand, for a reasonable portion of the cost of a replacement or reinforcing main resulting from that new usage. Section 2(A) states that a reasonable portion shall be determined as provided for in 2(G). Under Section 2(G), if existing mains leading to a main extension need to be supplemented by parallel mains "in order to satisfy demand or to maintain adequate pressure along the extension or main leading to the extension, a reasonable portion of those costs shall be included in the price of the main extension." We find an exemption from the Rule's apparent requirement that all the customers be known up-front before the charge is levied is appropriate in this instance. Here the area has been specifically designated by the City for residential growth and a competent engineering study has found that when 185 homes are added, 4500 feet of existing main will need to be reinforced with a second 12 foot main to maintain pressure.

We also find an exemption is justified for the cost allocation method. Section 3 describes how the utility should determine the cost to a customer of a main extension. Section 1(B) describes how the customer's contribution will be calculated. Section 1(C) describes an alternative method that allows the utility to charge all customers an equal share where lots to be serviced are of approximately equal size. Although the Chapter 65 is unclear as to when the alternative method can be used, we grant an exemption, to the extent necessary, to allow BSWC to calculate the cost of the reinforcing main by subtracting its contribution and then dividing the remaining amount by the projected 185 residences.

Our granting these exemptions from Chapter 65 is based on our understanding that the BSWC will construct the reinforcing main in yearly increments. According to BSWC, it intends to install approximately 375-750 feet of reinforcing main each year, as an anticipated 15 – 30 housing units are built. Therefore, it will be investing the funds collected shortly after it receives them. It does not appear that BSWC has followed this plan with the funds collected from the first 43 customers beginning in 2001. According to BSWC, in the Spring of 2004, some funds were first used to tap into the existing 24

inch main and it plans to install an initial segment of reinforcing main this Fall. The installation should match the collection of funds as closely as possible. If the Company diverges from this plan to install the reinforcing main in yearly increments, it should notify the Commission. BSWC should also keep a separate accounting of all funds collected, costs of the upgrades and expenditures of the funds. This accounting should be available upon the request of the Commission.

IV. CONCLUSION

We find just cause exists to grant an exemption from the strict application of Chapter 65's requirements and allow BSWC to collect its Reinforcement Charge from 185 new customers in the Buxton Road area of Saco. This includes the charges it has already collected. This means Mr. Dunn will be subject to the charge. Because we grant the exemption, we find no need to approve a system development charge, Sheet 10 (Original) filed on August 17, 2004.

Dated at Augusta, Maine, this 3rd day of November, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.